IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

JUDGMENT

Smt.Neni & Anr. Vs. State of Rajasthan
(S.B.Criminal Appeal No.479/87)

Dated of Judgment:- 17th August, 2006

PRESENT

HON'BLE MR.JUSTICE MOHAMMAD RARIQ

Mr.P.R.Choudhary, for the appellants.
Mr.Rameshwar Dave, Public Prosecutor for the State.
Mr.P.N.Mohnani, for the complainant.

BY THE COURT:-

Reportable

This criminal appeal has been filed by the appellants against the judgment dated 30.11.1987 passed by the Additional Sessions Judge No.1,Jodhpur whereby he has convicted and sentenced both the accused-appellants as under :-

U/s 306 IPC - Sentenced to 4 years' R.I. and a fine of Rs.500/- in default whereof to further undergo two months' R.I.

U/s. 201 IPC - Sentenced to 1 year's R.I. and a fine of Rs.250/-, in default whereof to further undergo one month's S.I.

All the aforementioned sentenced were ordered to run concurrently.

A written report was lodged by one Khetidas at Police

Station, Phalodi district Jodhpur on 27.11.1983 alleging therein that he received an information on telephone at about 4.30 p.m. that his daughter Sua, aged 19 years who was married to the son of Nagarji, resident of Phalodi has expired and her dead body has also been cremated also. It was informed that she died at 9.30 a.m. on that day. It was alleged that mother-in-law of her daughter intentionally committed her murder and his father-in-law was also suspected to be responsible for the alleged death. The information of her daughter was neither given to the police nor to the complainant. As and when deceased Mst. Sua came to her parental house, she used to complain about the illtreatment meted out by her mother-in-law and sometime her mother-in-law also beat her. It was stated by the complainant that her daughter had no ailment. It therefore requested that action be taken immediately to arrest the guilty. On the basis of such written report, a regular F.I.R. was registered for offences u/ss. 302 and 201 IPC and investigation commenced. The police after completion of investigation filed challan against the accused appellants for offences u/ss. 306 and 201 IPC. The trial Court at the conclusion of the trial convicted both the accused-appellants for offences u/ss. 306 and 201 IPC and sentenced them in the manner indicated above.

I have heard Mr.P.R.Choudhary, learned counsel for the appellants and Mr.Rameshwar Dave, learned Public Prosecutor for the State as well as Mr.P.N.Mohnani, for the complainant.

Mr.P.R.Choudhary, learned counsel for the appellants has

argued that the learned trial Court has committed an error in convicting the accused appellant for offence u/s 306 IPC even though no evidence whatsoever was produced by the prosecution that deceased Mst.Sua committed suicide. None of the witnesses has given any statement to this effect. P.W. 5 Gumanmal and P.W. 6 Raju who have not uttered a single word suggesting that the accused appellants ever harassed the deceased. It has been argued that deceased Mst. Sua died natural death. Even from the statement of P.W. 7 Avtar Singh, Dy. Superintendent of Police who visited the site of occurrence soon after the incident, it would be evident that there was no indication of any suspectful nature on the site of incident so as to create any doubt. No such indication has been given in the site plan Ex.P/1 either. He argued that the learned trial Court has failed to correctly appreciate the statements of D.W. 1 Amarchand and D.W. 2 Shyam Sunder according to whom information about the death of Mst.Sua was given to the parents of the deceased and in spite of receiving such information they did not come to attend the funeral. It has been argued that there are number of contradictions in the statements of the eye witnesses. D.W. 1 Amarchand has stated that he alongwith Madanlal went to Ramdevara on motor-cycle and informed Shri Khetidas about the death of his daughter. The motor cycle was being driven by Shyam Sunder. D.W. 2 Shyam Sunder has stated that he alongwith Amarchand and Madan went to Ramdevara around 9.30 a.m. and after informing Khetidas about the death of Mst.Sua around 12 in the noon they returned back. Since there was a marriage in the family of Gordhandas Chandia whose house was situated just in front of the accused Gawridutt, it was decided to cremate the deceased in noon itself.

They waited upto 1 -1.30 p.m. but Khetidas did not come. Learned counsel has further argued that the trial Court has committed an error by invoking Section 113-A of the Indian Evidence Act. Section 113-A was inserted in the Indian Evidence Act in its statute book by Act no.46 of 1983 which came into force w.e.f..26th December,1983 whereas the incident had taken place on 27th November,2003 prior to insertion of the said provisions in the Indian Evidence Act. He therefore argued that the trial court was not justified in recording a finding regarding presumption as to abetment of suicide committed by deceased Mst. Sua against the accused-appellants by invoking Section 113-A of the Indian Evidence Act.

Learned counsel for the appellants has further argued that P.W. 7 Avtar Singh has wrongly stated that there were signs of fire in the room of underground and his statement is contrary to what he has recorded in Ex.P/1, which is site-plan of the place of incident. According to the learned counsel, the Investigating Officer in Ex.P/1 has not mentioned any such suspected signs, on the contrary he has only stated that underground room was 6.8'x 6.8' and fresh soil was lying on the ground and walls were freshly white washed. He has stated that except in kitchen, there were no signs of smoke or fire in the house nor were there any blood spots or unusual marks on the walls.

Mr.P.R. Choudhary, learned counsel in support of his arguments relied upon the following judgments of the Hon'ble Supreme Court:-

(1) Chanchal Kumari & Ors. vs. Union Territory, Chandigarh
(1999 Cr.L.R. (S.C.) 152)
(2) Lekh Ram & Brij Lal vs. State of Punjab
(Cr.L.R.(SC) 1992, 394)
(3) Kailash Chand vs. State of Rajasthan

(1998 Cr.L.R.(Raj.) 1)
(4) Jai Ram vs. State of Rajasthan
(1995 Cr.L.R.(Raj.)p.36)

It has therefore been argued that the appeal should be allowed and the conviction recorded and sentenced awarded to the accused-appellants u/s 306 and 201 IPC should be set aside.

On the other hand, Shri Rameshwar Dave, learned Public Prosecutor has supported the judgment passed by the trial Court and argued that there was over-whelming evidence on record against the accused-appellants which prove that they were responsible for abetting Mst.Sua to commit suicide. He argued that the marriage of deceased Sua was solemnized with the son of the accused appellants on 18.11.1981 and since her death at the residence of the accused appellants had taken place in mysterious circumstances, a presumption u/s 113-A of the Indian Evidence Act would arise. He submitted that the dead body of deceased Mst. Sua was cremated by the accused-appellants in a hurried manner without informing her parents. In a young death like the one which has taken place in the present case not only parents have to be informed but have to be associated in the funeral. He further argued that Section 113-A of the Evidence Act is not a substantial provision but only procedural in nature. This will apply also in a case in which death of the woman had taken place even prior to insertion of Section 113-A of the Evidence Act. In support of his argument, Mr. Rameshwar Dave, learned Public Prosecutor has placed reliance on the following decisions :-

(1) Gurbachan Singh vs. Satpal Singh & Ors.
(AIR 1990 S.C. 209)
(2) Pawan Kumar vs. State of Haryana
(2001 Cr.L.J. 1679)
(3)Arvind Kumar & Anr. vs. State of M.P.
(2001 Cr.L.J. 2317)

I have given my thoughtful consideration to the arguments advanced by both the learned counsels and perused the record.

Learned trial Court has analyzed the evidence available on record in detail but in order to form an independent view of the matter I have also examined the evidence produced by both the prosecution and the defence.

P.W. 2 Radha Kishan has stated that even though the father of deceased Mst. Sua had agreed to give 5 tollas of gold but he could give only 2 tollas of gold and the dispute had arisen between the parties at the time of marriage itself. When Mst. Sua after her marriage returned to her parental house she complained that her mother-in-law used to harass her for not bringing sufficient dowry . She had even shown marks of beating on the back of her body. He stated that Shri Khetidas, father of Mst. Sua also told him that his daughter was harassed by her in-laws and they used to beat her.

P.W. 3 Khetidas has stated that as and when Mst. Sua would come to his house, she narrated the instances of harassment and beating at the hands of her-in-laws. He further stated that the in-laws of

Mst. Sua did not inform him about her death and he came to know about the same from his brother-in-law(Jija) Mohanlal. He thereafter went to Phalodi and submitted a written report to the Police Station. He stated that everyone in Phalodi was alleging that his daughter had been burnt to death. He has denied that anybody had come to Ramdevara Fair to inform about the death of his daughter.

Smt.Sunder who is sister of Khetidas and aunt of Mst. Sua has been examined as P.W. 4. She has stated that when Mst.Sua met her after marriage she told her that her in-laws used to harass her and sometimes beat her also. She told that one local native of Phalodi informed her about the death of Mst.Sua but by the time she reached the house of accused-appellants, her dead body had already been taken for cremation.

Gumanmal, brother of deceased Mst.Sua has been examined as P.W.5. He has stated that his sister Mst.Sua did not much talk to her because he always stayed at the shop. However, his mother told him that Sua's in-laws used to harass her for not bringing sufficient dowry. He has stated that he received phone call from his uncle Mohanlal who informed that his sister was burnt to death.

P.W. 6 Raju who is also brother of deceased Mst.Sua has stated that when he went to Phalodi to house of her in-laws. 4-5 days after her marriage for brining her back, Mst. Sua informed him that her in-laws were having dispute with her on the issue of dowry. Sometime

thereafter he again went to Phalodi and talked to her husband about the same issue. He told that the dispute on such small issue was normal. Raju has also stated that several persons from their community who were common relatives of both the parties came to him and Jasraj Ji who is elder brother of his father 2-3 days after the incident. They advised that the complainant should settle the dispute after accepting a sum of Rs.10,000-15,000. P.W. 1 Mohanlal has corroborated this fact that the accused party tried to settle the dispute with the complainant party and several persons of their community came to him at about 1-1.30 p.m. on 28.11.1983 with the request that he should take them to Jasraj, who is elder brother of Khetidas. When the query was put by the Court as to on what dispute they wanted settlement, he refused to give reply but later stated that they wanted to persuade father of the deceased not to lodge a criminal case .

P.W. 8 Gunraj is brother-in-law (Jija) of Khetidas. He has stated that he is also a permanent native of Phalodi. He met Mst. Sua on 2-3 occasions at Phalodi .She had told that her mother-in-law and father-in-law used to harass her for not bringing 5 tollas of gold and threatened that they would kill her. He further stated that Chorumal told him that accused Nagarmal was not satisfied with the dowry as neither 5 tollas of gold was given nor inspite of promise to give 15-20 dresses(ladies suites), only 4-5 dresses were given.

P.W. 9 Jasraj is elder brother of Khetidas, has stated that Lunji had complained about insufficiency of gold and suites/dresses given at the time of marriage itself. He has named his relatives who had come

to him at about 1-1.30 p.m. in the night of 28.11.1983 and stated that family of the deceased should forget whatever has happened and the dispute should be amicably settled.

P.W. 10 Jethi who is elder sister of deceased Mst.Sua has stated that she met Mst. Sua twice at her in-laws house and also had a talk with her mother-in-law Naini Bai. Naini Bai complained that when 5 tollas of gold was promised why only 2 tollas were given. Jethi told that her parents have also given the equal quantity of gold to her also. Jethi has further stated that her sister during conversation told that her mother-in-law and father-in-law used to beat her for not brining sufficient dowry. She also told that they used to threaten her that they would kill her.

P.W. 11 Mohanlal is brother-in-law of Khetidas and husband of his sister Smt.Sunder(P.W.4) . He is resident of Phalodi. He has stated he did not receive any information of the death of Mst. Sua. He came to know about this in the market of Phalodi. He gave this information to Khetidas on telephone at Pokaran. He made another telephone call to Gumanmal who came to him in the evening.

The Investigating Officer of the case Mr. Avtar Singh, who has been examined as P.W-7. He has supported the case the prosecution and has proved the site plan. He has stated that there was an underground room at the residence of accused where the signs of fire were visible. This was a very small underground with small size of gate. Site plan was exhibited as Ex.P/1. He has also stated that he seized two

ear-rings vide Ex.P/5 and proved the F.S.L. report Ex.P/12.

All the prosecution witnesses have provided corroboration to each other in regard to material particulars of their statements. According to which marriage of deceased Mst. Sua was solemnized with Jethumal, son of the accused appellants on 18.11.1981 at Phalodi. At the time of marriage, 5 tollas of gold and 15-20 suites/dresses were agreed to be given in dowry and against which Khetidas could manage to give only 2 tollas of gold and 4-5 dresses. On account of this the accused used to harass the deceased and subject her to cruelty. When husband of Jethi complaint about this, the accused-appellants assured that such incidents would not be repeated in future. It has also come on record that although the death of deceased Mst. Sua took place on 9 a.m. in the morning and that she was cremated around 1-1.30 p.m. in the afternoon but neither the information to the family members of deceased Mst. Sua from parental side namely her father, mother and brothers who were staying at Pokaran nor such information was given to her aunt Sunderi and uncle Mohanlal who were residing at Phalodi itself. The defence has produced two witnesses D.W.1 Amarchand and D.W. 2 Shyam Sunder to prove that information about the death of Mst. Sua was timely given to father of the deceased. But this version does not inspire confidence firstly because when information was not given to Smt. Sunderi and her husband Mohanlal, who are natives of Phalodi itself and residents of the same locality in which the house of accused was situated and secondly all the relatives of the deceased who have been examined as witnesses have denied having received any such information and remained unshaken in

their cross-examination. It cannot be believed that none of close relatives of the deceased would turn up to see the dead body of Mst. Sua or to attend cremation in spite of receiving such a bad news. The hurried manner in which the deceased Mst. Sua was cremated poorly reflects on the conduct of the accused. Although, they have tried to explain through defence witnesses who have stated that since there was a marriage in the family of Gordhandas Chanda whose house was situated just in front of the house of the accused and on account of persuasion and pressure of the members of the locality they decided to cremate dead body of Mst. Sua at the earliest but this was really no such big reason as to hurriedly cremate the dead body without informing the parents/relatives of the deceased. Evidence that has come on record prove that after the incident of death of Mst. Sua, she was cremated even without waiting for the arrival of any of her family members. Not even the local police was informed about this unfortunate incident. Efforts were made from the side of the accused by sending members of family namely, Ramlal, Madanlal, Lunji, Mohanji, Bherji and Thakurdas who went to Khetidas at about 1-1.30 p.m. in the night of 28/29th March, 1983 and to take them to the residence of P.W. 9 Jasraj, elder brother of Khetidas at about 1.30 p.m. in the same night. These people wanted to mediate for amicable settlement between the accused and the complainant in lieu of which the accused offered some money also so that the complainant party may not pursue the police case.

It has come on record that two damaged ear-rings of gold and one “Nug” of purple colour which the deceased was wearing at the

time of death were recovered by the police and all these three were sent for examination by the Forensic Science Laboratory. The relevant part of Ex.P/12 is reproduced hereunder:-

> "All the three samples, exhibits A-1, A-2 and A-3 are found exposed to smoke and excessive heat."

It would be evident from the above that all these articles namely, two damaged ear-rings and one "Nug" of purple colour on examination by the experts were found exposed to smoke and excessive heat and therefore this also provides a fillip to the case of the prosecution that the death had taken place in mysterious circumstances. In the room where unfortunate incident took place, the Investigating Officer found fresh soil lying on the floor and walls had been freshly white washed.

Let me now examine the ratio of various judgments cited by learned counsel for the appellants.The Hon'ble Supreme Court in the case of Chanchal Kumari vs. Union Territory,Chandigarh(supra) did not believe the evidence on the charge of abement of suicide therefore, in the facts of that case set aside the conviction of the accused. Similarly, their Lordships of the Hon'ble Supreme Court in the case of Harjeet Singh vs. State of Punjab,reported in 2006 Cr.L.J. p.554 set aside the conviction of the accused recorded u/s 306 even though the charge framed against the petitioner was u/s 304(B) and not u/s 306 IPC. Besides, their Lordships held that there was no evidence showing that the deceased was subjected to cruelty or harassment by appellant husband or any of his relative for or in connection with any demand of dowry. Similarly, in the

case of Lekhram & Brij Lal vs. State of Punjab (supra) wherein the Hon'ble Supreme Court was dealing with a case where the deceased was suffering from illness and undergoing treatment. There were contradictions in the statements of the prosecution witnesses. Brother of deceased in one breath denied having gone to the cremation at the time of cremation of his sister and on another breath he admitted having gone to the cremation ground and tried to stop the cremation but failed. He never went to the police station to inform anybody. The information of death was given to the family members of the deceased and the evidence of the prosecution did not establish that it was a case of dowry death. In those circumstances, conviction of the accused u/s 302/34 IPC was set aside. The Division Bench of this Court in the case of Kailash Chand vs State of Rajasthan(supra) cited by the learned counsel for the appellant has also turned on its own facts. In that case, there was a delay of five days in lodging of F.I.R. which was ultimately lodged after consultation with an advocate and there was no reliable evidence that the accused cremated the dead body of the deceased hurriedly and no evidence or demand of dowry before the death was produced. All the judgments relied upon by the learned counsel for the appellants are thus distinguishable and do not in any manner help the appellants in the present case.

The entire gamut of the evidence prove beyond reasonable doubt that death of Mst.Sua was not a natural death. The accused did not allow any outsider to know about the reasons of the death. The accused did not inform either the parents or the local relatives of the deceased

about the death or its reasons. The accused also did not inform the parents and other relatives of the deceased about such death and did not wait for their arrival to attend the cremation. They also did not inform the local police. In these facts of the case when the prosecution has not brought on record any evidence to the effect that Mst. Sua was murdered but the entire case rests on the evidence that she was abetted to commit suicide by the accused ,the presumption as to abetment of suicide by Mst.Sua under Section 113-A of the Indian Evidence Act would certainly arise, particularly when the marriage of the deceased was solemnized on 18.11.1981 and the incident of her death has taken place on 27.11.1983.

Abetment to commit suicide is a mental process of instigating a person to commit suicide .In the case of married woman, Section 113 has been purposely engrafted by the legislature into a Statute Book so that when a case like the present one is brought to the Court on allegations of abetment by husband or any other relatives of the husband , the woman who has committed the suicide within a period of seven years from the date of her marriage can couple with the allegations that her husband or any of the relatives of her husband had subjected her to cruelty, the Court may presume having regard to all the other circumstances of the case that such suicide has been abetted by her husband or any such relatives of her husband. In this connection, the following observations of the Hon'ble Supreme Court in Randhir Singh & Anr. vs. State of Punjab(supra) are apt to quote hereunder :-

“12.Abetment involves a mental process of instigating a

> person or intentionally aiding that person in doing of a thing. In cases of conspiracy also it would involve that mental process of entering into conspiracy for the doing of that thing. More active role which can be described as instigating or aiding the doing of a thing is required before a person can be said to be abetting the commission of offence under Section 306 IPC."

In the facts of the present case however the accused completely failed to rebut this presumption by any cogent evidence to explain as to how and under what circumstances Mst. Sua committed suicide and why did they not inform her parents and other relatives about her death and why did they hurry up to cremate her dead body in absence of any of her near relatives.

I am not persuaded to accept the argument of the learned counsel for the appellants that there was no evidence of the accused being subjected to cruelty and tortured for not bringing sufficient dowry. I am also not inclined to accept his argument that the statement given by Avtar Singh, Investigating Officer of the case that there were signs of fire should be completely ignored.

This now takes me to the arguments advanced by the counsel for the appellant. Section 113-A of the Evidence Act having been engrafted into the Evidence Act w.e.f. 26.12.1983, such presumption would not be applicable to the incidents which has taken place prior to the said date. In the present case, the incident of death has taken place on 27.11.1983. This issue has been conclusively decided by the Hon'ble Supreme Court in Gurubachan Singh vs. Satpal Singh(supra) wherein their Lordships held that provisions of Section 113-A does not create any

new offence and as such it does not create any substantial right but it is merely a matter of procedure of evidence and as such it is retrospective. I may in this connection usefully refer to the observations of the Hon'ble Supreme Court from para 34 to 40:-

> "34.In the instant case the deceased Ravinder Kaur was married to the accused Satpal Singh in November, 1982 and she committed suicide on June 25, 1983. It has also been found on a consideration of the circumstantial evidence that she was compelled to take the extreme step of committing suicide as the accused persons had subjected her to cruelty by constant taunts, mal-treatment and also by alleging that she has been carrying an illegitimate child. The suicide having been committed within a period of seven years from the date of her marriage in accordance with the provisions of this Section, the Court may presume having regard to all the other circumstances of the case which we have set out earlier that such suicide had been abetted by the husband and his relations. Therefore, the finding arrived at by the Additional Sessions Judge are quite in accordance with the provisions of this Section and the finding of the High Court that the accused persons could not be held to have instigated or abetted the commission of offence, is not sustainable in law.
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> 35. It has been contended on behalf of the accused-respondents that Section 113-A of the Indian Evidence Act was inserted in the Statute Book by Act 46 of 1983 whereas the offence under S.306, IPC was committed on June 23, 1983 i.e. Prior to the insertion of the said provisions in the Indian Evidence Act. It has, therefore, been submitted by the learned counsel for the respondents that the provisions of this Section cannot be taken recourse to while coming to a finding regarding the presumption as to abetment of suicide committed by a married woman, against the accused persons.
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> 36. The provisions of the said Section do not create any new offence and as such it does not create any substantial right but it is merely a matter of procedure of evidence and as such it is retrospective and will be applicable to this case. It is profitable to refer in this connection to Halsubry's Laws of England, (Fourth

Edition), Volume 44 page 570 wherein it has been stated that :

"The general rule is that all statutes, other than those which are merely declaratory or which relate only to matters of procedure or which relate only to matters of procedure or of evidence, are prima facie prospective, and retrospective effect is not to be given to them unless, by express words or necessary implication, it appears that this was the intention of the legislature...."

37. It has also been stated in the said volume of Halsbury's Law of England at page 574 that :

"The presumption against the retrospective does not apply to legislation concerned merely with matters of procedure or of evidence; on the contrary, provisions of that nature are to be construed as retrospective unless there is a clear indication that such was not the intention of the Parliament."

38. In Blyth v. Blyth, 1966 AC 643 the wife left the husband in 1954 and lived with the co-respondent until August, 1955, when she broke off the association. In 1958 the husband and wife met by chance and sexual intercourse took place. In December, 1962, the husband sought a divorce on the ground of his wife's adultery. During the pendency of the application S.1 of the Matrimonial Causes Act, 1963 came into force on July 31, 1963 which provides that any presumption of condonation which arises from the continuance or resumption of marital intercourse may be rebutted on the part of a husband, as well as on the part of a wife, by evidence sufficient to negative the necessary intent. The question arose whether this provision which came into force on July 31, 1963 can be applied in the instant case. It was held that the husband's evidence was admissible in that S.1 of the Act of 1963 only altered the law as to the admissibility of evidence and the effect which the courts are to give to evidence, so that the rule against giving retrospective effect to Acts of Parliament did not apply.

39. In Herridge v. Herridge, (1966) 1 All ER 93 similar question arose. It was held that S.2(1) of the Act of 1963 was a procedural provision, for it dealt with the adducing of evidence in relation to an allegation of condonation in any trial after July 31, 1963;

> accordingly the sub-section was applicable, even though the evidence related to events before that date, and the resumption of cohabitation in the present case did not amount, by reason of S.2(1) , to condonation.
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> 40. On a conspectus of these decisions, this argument on behalf of the appellant fails and as such the presumption arising under S.113-A of the Evidence Act has been rightly taken into consideration by the trial Court."

In another case of Pawan Kumar vs. State (supra) the Hon'ble Supreme Court held that incorporation of Section 113-A of the Evidence Act in the statute book depicts a legal presumption though however the time period of within seven years of marriage is the pre-requisite for such a presumption.

As a result of the aforesaid discussion, the appeal preferred by the accused-appellants fails and is hereby dismissed. Consequent to follow.

(MOHAMMAD RAFIQ),J.